

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Anja Stork et al. Confirmation No.: 3334  
Appln. No. : 10/540,361 Art Unit: 1611  
Filed : June 23, 2005 Examiner: WELTER, Rachael  
  
Title : SPRAYABLE OIL-LIKE FORMULATIONS

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December 1, 2008

(Date)

James P. Barr

Name of applicant, assignee, or Registered Representative

/James P. Barr/

(Signature)

December 1, 2008

(Date of Signature)

Commissioner for Patents  
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Alexandria, VA 22313-1450

**RESPONSE TO ELECTION OF SPECIES REQUIREMENT**

In response to the Election of Species Requirement mailed October 30, 2008, Applicants elect, with traverse, the absence of one or more suitable oils in addition to the oily component of the emulsion, as the elected species. Please consider the following Remarks in response to the Election Requirement.

## **I. Election of Species Requirement**

The Examiner requires election from “the presence or absence of one or more suitable oils in addition to the oily component of the emulsion, as disclosed in claims 1, 3 and 4-6.” The Examiner argues that “these species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.” Applicants respectfully submit that the examiner has raised lack of unity of invention on the basis of a narrow, literal and academic approach. As the Examiner is well aware, if there is a single general inventive concept that appears novel and involves inventive step, there is unity of invention and an objection of lack of unity does not arise. See M.P.E.P. 1850 11, page 1800-96. Here, the claims relates to a clear sprayable oil-in-water emulsion wherein the oily component comprises one or more silicone waxes, optionally in admixture with one or more suitable oils, the aqueous phase comprises one or more polyols or hydroxy acids or their salts and wherein the emulsion further comprises an emulsifier. Accordingly, there is a single general inventive concept, the clear sprayable oil-in-water emulsion. Also, Applicants respectfully submit that the Examiner has failed to set forth evidence of a serious search and examination burden if election were not required. A search for an oil-in-water emulsion with or without an additional oil would not constitute a serious search and examination burden. Accordingly, Applicants respectfully request withdrawal of the election requirement. Nevertheless, in an effort to expedite prosecution, Applicants elect, with traverse, the absence of one or more suitable oils in addition to the oily component of the emulsion, as the elected species. Claims 1, 2, and 7-10 encompass the elected species.

## **II. Conclusion**

For the reasons set forth above, Applicants respectfully request withdrawal of all election requirements. If the Examiner feels that a discussion with Applicants’ representative would be helpful in resolving the outstanding issues, the Examiner is invited to contact Applicants’ representative at the number provided below.

If there are any other fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 10-0750/J&J5012USPCT/JPB. If a fee is required for an Extension of time 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account No. 10-0750/J&J5012USPCT/JPB.

Respectfully submitted,

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